PUBLIC LAW 99-372—AUG. 5, 1986

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HANDICAPPED CHILDREN'S PROTECTION ACT OF 1986

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Public Law 99-372
99th Congress

An Act

Aug. 5, 1986
[S. 415]

To amend the Education of the Handicapped Act to authorize the award of reasonable attorneys' fees to certain prevailing parties, to clarify the effect of the Education of the Handicapped Act on rights, procedures, and remedies under other laws relating to the prohibition of discrimination, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Handicapped Children's Protection Act of 1986.
Courts, U.S.
20 USC 1400 note.

SHORT TITLE

SECTION 1. This Act may be cited as the "Handicapped Children's Protection Act of 1986".

AWARD OF ATTORNEYS' FEES

20 USC 1415.

SEC. 2. Section 615(e)(4) of the Education of the Handicapped Act is amended by inserting "(A)" after the paragraph designation and by adding at the end thereof the following new subparagraphs:

"(B) In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a handicapped child or youth who is the prevailing party.

"(C) For the purpose of this subsection, fees awarded under this subsection shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

"(D) No award of attorneys' fees and related costs may be made in any action or proceeding under this subsection for services performed subsequent to the time of a written offer of settlement to a parent or guardian, if—

28 USC app.

"(i) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

"(ii) the offer is not accepted within ten days; and

"(iii) the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parents or guardian than the offer of settlement.

"(E) Notwithstanding the provisions of subparagraph (D), an award of attorneys' fees and related costs may be made to a parent or guardian who is the prevailing party and who was substantially justified in rejecting the settlement offer.

"(F) Whenever the court finds that—

"(i) the parent or guardian, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

"(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in

the community for similar services by attorneys of reasonably comparable skill, experience, and reputation; or

"(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding,

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this subsection.

"(G) The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of this Act.". State and local government. 20 USC 1415.

EFFECT OF EDUCATION OF THE HANDICAPPED ACT ON OTHER LAWS

SEC. 3. Section 615 of the Education of the Handicapped Act is amended by adding at the end thereof the following new subsection: 20 USC 1415.

"(f) Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, title V of the Rehabilitation Act of 1973, or other Federal statutes protecting the rights of handicapped children and youth, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (b)(2) and (c) shall be exhausted to the same extent as would be required had the action been brought under this part.". 29 USC 790.

GAO STUDY OF ATTORNEYS' FEES PROVISION

SEC. 4. (a) The Comptroller General of the United States, through the General Accounting Office, shall conduct a study of the impact of the amendments to the Education of the Handicapped Act made by section 2 of this Act. Not later than June 30, 1989, the Comptroller General shall submit a report containing the findings of such study to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate. The Comptroller General shall conduct a formal briefing for such Committees on the status of the study not later than March 1, 1988. Such report shall include the information described in subsection (b). Reports. 20 USC 1415 note. 29 USC 701 note.

(b) The report authorized under subsection (a) shall include the following information:

(1) The number, in the aggregate and by State, of written decisions under sections 615 (b)(2) and (c) transmitted to State advisory panels under section 615(d)(4) for fiscal years 1984 through 1988, the prevailing party in each such decision, and the type of complaint. For fiscal year 1986, the report shall designate which decisions concern complaints filed after the date of the enactment of this Act. 20 USC 1415.

(2) The number, in the aggregate and by State, of civil actions brought under section 615(e)(2), the prevailing party in each action, and the type of complaint for fiscal years 1984 through 1988. For fiscal year 1986 the report shall designate which decisions concern complaints filed after the date of enactment.

(3) Data, for a geographically representative selective sample of States, indicating (A) the specific amount of attorneys' fees, costs, and expenses awarded to the prevailing party, in each action and proceeding under section 615(e)(4)(B) from the date of the enactment of this Act through fiscal year 1988, and the

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range of such fees, costs, and expenses awarded in the actions and proceedings under such section, categorized by type of complaint and (B) for the same sample as in (A) the number of hours spent by personnel, including attorneys and consultants, involved in the action or proceeding, and expenses incurred by the parents and the State educational agency and local educational agency.

(4) Data, for a geographically representative sample of States, on the experience of educational agencies in resolving complaints informally under section 615(b)(2), from the date of the enactment of this Act through fiscal year 1988.

20 USC 1415.

EFFECTIVE DATE

20 USC 1415.

SEC. 5. The amendment made by section 2 shall apply with respect to actions or proceedings brought under section 615(e) of the Education of the Handicapped Act after July 3, 1984, and actions or proceedings brought prior to July 4, 1984, under such section which were pending on July 4, 1984.

Approved August 5, 1986.

LEGISLATIVE HISTORY—S. 415 (H.R. 1523):

HOUSE REPORTS: No. 99-296 accompanying H.R. 1523 (Comm. on Education and Labor) and No. 99-687 (Comm. of Conference).

SENATE REPORTS: No. 99-112 (Comm. on Labor and Human Resources).

CONGRESSIONAL RECORD:

Vol. 131 (1985): July 30, considered and passed Senate.
Nov. 12, H.R. 1523 considered and passed House; S. 415, amended, passed in lieu.

Vol. 132 (1986): July 17, Senate agreed to conference report.
July 24, House agreed to conference report.

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